

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

ROB KAVANAUGH (Friends of the Western
Gray Squirrel),

Petitioner,

v.

CITY OF LACEY

Respondent.

Case No. 15-2-0001

ORDER OF DISMISSAL

On October 26, 2015 a letter purporting to be a Petition for Review (PFR) was filed by Rob Kavanaugh (Petitioner). The PFR appears to express concerns regarding tree removal by the City of Lacey (City) and references RCW 36.70A.130, RCW 36.70A.180 as well as an unknown third statute (RCW 36.70A. 2(a)(b)).

A review of the PFR fails to disclose any allegation of final action taken by the City. Under these circumstances, it is incumbent upon the Board to consider whether Petitioner has properly invoked the Board's jurisdiction.¹ The Growth Management Hearings Board is a creature of the Legislature, without inherent or common-law powers and, as such, may exercise only those powers conferred by statute, either expressly or by necessary implication.² A party cannot confer jurisdiction; all that a party does is invoke it. It is necessary to meet statutory requirements in order to properly invoke jurisdiction.³ To invoke the Board's jurisdiction to review compliance with the Growth Management Act

¹ See *Total Outdoor Corp. v. City of Seattle*, Case No. 13-3-0008, Order of Dismissal (September 23, 2013); *William H. Wright v. San Juan County*, Case No. 13-2-0019, Order of Dismissal (July 5, 2013).

² *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

³ *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319 (2003).

1 (chapter 36.70A RCW), a party with standing must comply with the chapter's procedural
2 requirements:

3 a.) File a petition for review that includes a detailed statement of issues
4 presented for resolution by the Board;⁴

5 b.) File the petition for review within 60 days after notice of publication
6 by the City of the adoption of a comprehensive plan, development
7 regulation, or permanent amendment thereto;⁵ and,

8 c.) Allege noncompliance with the requirements of the GMA.⁶

9 In this instance, any challenge would necessarily have to follow a final decision [the
10 governmental action] of the City of Lacey. The PFR includes no allegation of the adoption
11 of an ordinance, resolution or other documentation evidencing final governmental action,
12 nor was any such enactment attached to the PFR. The PFR instead refers to various
13 actions described as "land clearing clear cuts" and the cumulative effect of land clearing
14 actions. These actions do not constitute the adoption or amendment of a comprehensive
15 plan or development regulations which are the triggers to file a petition with the GMHB as
16 required by RCW 36.70A.280(1) and RCW 36.70A.290(2). The PFR also fails to include the
17 required detailed statement of issues. Under the facts and circumstances presented to the
18 Board, there is but one conclusion: Kavanaugh has failed to properly invoke the Board's
19 jurisdiction.
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21 The Board must dismiss a petition when the Board determines jurisdiction was not
22 properly invoked as the Board has no power to adjudicate that particular case.⁷

23 Consequently, the Board concludes as follows: (1) there was no final, appealable
24 decision made by the City of Lacey, (2) the PFR on its face does not meet the jurisdictional
25 requirements of the GMA, and (3) Petitioner has failed to invoke the Board's jurisdiction to
26 consider a GMA violation.
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30 ⁴ RCW 36.70A.290(1).

31 ⁵ RCW 36.70A.290(2).

32 ⁶ RCW 36.70A.280(1)(a); The provisions of RCW 36.70A.280(1)(b)-(f) are not relevant.

⁷ See *Crosby v. Spokane County*, 137 Wn.2d 296, 301 (1999) [If a court lacks jurisdiction over a proceeding, it "may do nothing other than enter an order of dismissal"]. See also *Griffith v. City of Bellevue*, 130 Wn.2d 189, 196 (1996).

1 **ORDER**

2 Based on the foregoing, the Petition for Review filed by Rob Kavanaugh (Friends of
3 the Western Gray Squirrel), Case No. 15-2-0001, is hereby dismissed.

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5 DATED this 9th day of November, 2015.

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7 _____
8 William Roehl, Presiding Officer

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10 _____
11 Nina Carter, Board Member

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13 _____
14 Margaret Pageler, Board Member

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17 Note: This is a final decision and order of the Growth Management Hearings Board issued
18 pursuant to RCW 36.70A.300.⁸
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28 _____
29 ⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
30 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved
31 by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in
32 RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the
board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970.
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth
Management Hearings Board is not authorized to provide legal advice.